

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/805,811	Applicant(s) MARKS ET AL.
Examiner CRAIG E. WALTER	Art Unit 2188

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 March 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1,2,4-6,9-12,14 and 16-20.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Hyung S SOUGH/
Supervisory Patent Examiner, Art Unit 2188
04/24/08

/Craig E Walter/
Patent Examiner, Art Unit 2188

Continuation of 11, does NOT place the application in condition for allowance because:

As for claims 1, 10 and 18, Applicant sets forth three arguments:

(1) Applicant alleges that Horst fails to teach "a non-volatile memory/journal in each drive controller for storing commands". This argument however is not persuasive as Examiner notes only one drive controller is claimed in each of these claims. Therefore "a memory" in the one controller as depicted by Horst meets Applicant's recitation of a memory "in each drive controller" as presently recited.

(2) Applicant alleges that Horst fails to teach "a count of commands in each drive controller". This argument is substantially similar to the one set forth by Applicant in the remarks filed 17 December 2007, therefore it is not persuasive as per Examiner's retort in the action made FINAL 29 January 2008. Additionally note, (as stated above in the response to argument (1)), only one drive controller is set forth in these three claims, therefore a memory in a drive controller meets the requirement of a memory in each controller as argued by Applicant (see Examiner's response to argument 1, supra).

(3) Applicant alleges that Horst fails to teach "a predetermined threshold value for the count of commands". This argument however is not persuasive. Examiner and Applicant fundamentally disagree on whether the maximum number of commands stored in Horst's queue as per col. 7, ll. 35-67 constitutes a predetermined threshold. Examiner maintains that since the queue is static (only 256 entries are permitted), that a "predetermined threshold" is in fact met once the queue is filled.

With respect to claim 5, Applicant sets forth very similar arguments as asserted against claims 1, 10, and 18, however further alleges that Wu fails to cure the alleged deficiencies. These arguments are not persuasive. Examiner maintains that Horst anticipates all elements in common with claims 1, 10 and 18 for the reasons stated above. Though Applicant continues by contending that the Wu reference fails to teach the alleged deficiencies of Horst, this argument is rendered moot as Examiner maintains that Wu was relied upon in combination with Horst for claim 5 to teach "each drive controller (Fig. 1, elements 14A and 14B), [as being] associated with a single drive (Fig. 1, elements 16A and 16B)- paragraph 0032, all lines" - see page 10 of Examiner's action made FINAL 29 January 2008.

Applicant's assertion that each dependant claim is allowable for further depending on an allegedly allowable base claim is rendered moot, as Examiner maintains that all presently recited base claims in the instant application stand rejected for being anticipated and/or rendered obvious by the previously cited prior art.